

The sale of service that is accompanied by the incidental transfer of tangible personal property would be subject to liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

November 21, 2000

Dear Xxxxx:

This letter is in response to your letter that we received in our office on August 4, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I need your help in answering a question for me. I have a customer who said it is a state law that I must give them a receipt without them asking for one first. I'm not a retail store but a service for them. If you could please give me something in written that show this is a law or not I would be very thankful.

The provision of a service in Illinois that is not accompanied by the transfer of tangible personal property is generally not subject to Retailers' Occupation Tax liability. The sale of service that is accompanied by the incidental transfer of tangible personal property, such as tanning lotions or oils, would be subject to liability under the Service Occupation Tax Act.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is a de minimis serviceman not required to be registered under Section 2a of the Retailers' Occupation Tax Act. Please see the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may

qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers.

Regarding the first three methods where servicemen collect a corresponding amount of Service Use Tax from their customers, please note that Section 5 of the Service Use Tax Act (35 ILCS 105/5) states in part:

"Every serviceman . . .making sales of service involving the incidental transfer of property for use in this State . . . shall, when collecting the tax as provided in Section 3-40 of this Act from the purchaser, give to the purchaser (if demanded by the purchaser) a receipt for the tax . . .The receipt shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt may refer."

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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